IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

Bail Appl..No. 3421 of 2007()

PETITIONERS

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1. K.A.JOSEPH, S/O ASTHAPANOSE,
   KALLUNGAL HOUSE, PONOTH ROAD,
   KALOOR, COCHIN.

2. M.S.JAYAKUMARI, W/O B.S.RADHAKRISHNAN,
   112, SANKAR NAGAR, KAIMANOM P.O.,
   THIRUVANANTHAPURAM.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.ANIL THOMAS(T)
SMT.K.V.RESHMI

RESPONDENTS: COMPALINANT/STATE

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1. THE DY.S.P., CBCID, IDUKKI.

2. THE SUB INSPECTOR OF POLICE,
   MUNNAR POLICE STATION.

3. THE STATE OF KERALA, REP. BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY D.G.P. SRI. P.G. THAMPY

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 3421 OF 2007

Dated this the 25th day of June, 2007

ORDER

Application for anticipatory bail. The petitioners face allegations under Sec.420 of the IPC. A crime has been registered on the basis of a complaint filed by the Tahsildar, Devikulam. The complaint encloses the proceedings of the District Collector, Idukki. The crux of the allegations is that the petitioners, who are in possession of certain items of properties in Pallivasal Village of Devikulam Taluk, had, contrary to the stipulations of law, cheated the Government and had constructed 7 buildings with the intention of running resorts collecting exorbitant amounts from the occupants. This conduct, it is alleged, amounts to the offence punishable under Sec.420 of the IPC. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners raised various contentions about the validity of the action initiated by the District Collector. Those contentions are totally beyond the scope of the present proceedings and such contentions will

have to be raised at appropriate stage and before the appropriate fora. The learned counsel submits that, at any rate, the ingredients of cheating punishable under Sec.420 of the IPC are not at all made out from the allegations even if they were accepted in toto. In these circumstances, the petitioners pray that directions under Sec.438 of the Cr.P.C. may be issued in their favour.

3. The learned Director General of Prosecution, who has himself appeared for the State in this petition, contends that there are no circumstances justifying or warranting the invocation of the extraordinary equitable discretion available to this Court under Sec.438 of the Cr.P.C. The learned D.G.P. submits that the allegation is one of defrauding the State and, in these circumstances, a strict view is liable to be taken. It is submitted that this petition for anticipatory bail may be dismissed.

4. The learned D.G.P. was requested pointedly to explain how the ingredients of the offence of cheating are revealed from

the allegations raised in the complaint of the Tahsildar as also from the appended proceedings of the District Collector. I shall very carefully and scrupulously avoid any unnecessary expression of opinion regarding the credibility of the data collected or the acceptability of the allegations. But I must say that I am not at all satisfied that the allegations raised can be held to reveal an offence punishable under Sec.420 of the IPC.

5. The crux or gravamen of the offence of cheating punishable under Sec.420 of the IPC is the making of a representation which is false and which the maker of the representation knows to be false and which representation he makes in order to fraudulently induce the victim to part with property or to do or omit to do something which he would not otherwise have done or would have done. So reckoned, analysing the allegations in a forensic manner, it must be said that the allegations do not reveal the offence of cheating punishable under Sec.420 of the IPC.

6. For the laity, any breach of promise can be described as

cheating. But in law – in the penal law, the offence of cheating must take in specific allegations and ingredients. What is cheating to the layman will not be cheating necessarily under law. The learned D.G.P., after taking time, only submits that the stipulations in the assignment of land that certain conditions have to be observed have not been observed in the instant case and such non-observance is with the intention of making huge profit. No resort ought to have been constructed in the land as per the terms of the assignment. But that has been done with profit motive. This is the only allegation raised in the complaint. I need only say that this, certainly, is not the offence of cheating under the penal law. One shudders at the thought that such serious allegations on such a sensitive issue can be raised without proper home work and proper analysis of the ingredients of the offence. The fact remains that the petitioners do not deserve to suffer the trauma of arrest and incarceration on an allegation like the instant one. I am satisfied that the petitioners can be granted anticipatory bail. At the risk of

repetition, I would like to state that I have not intended to express any opinion on the validity of the action taken by the Government in the matter of evictions/demolition. Suffice it to say that the allegation of cheating does appear to me to be totally baseless.

7. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioners shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 2/7/07. They shall be released on regular bail on their executing bonds for Rs.25,000/- each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 12 noon on 3/7/07 and thereafter they shall make themselves available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if those directions were not issued at all;

(iv) If the petitioners were arrested prior to their surrender on 2/7/07 as directed in clause (i) above, they shall be released on their executing bonds for Rs.25,000/- each without any sureties undertaking to appear before the learned Magistrate on 2/7/07.

(R. BASANT, JUDGE)

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R. BASANT, J.

B.A.NO. 3421 OF 2007

Dated this the 19th day of June, 2007

ORDER

Heard the learned counsel for the petitioners and the learned Director General of Prosecution in part. The learned D.G.P. was pointedly requested to explain how the registration of the F.I.R. under Sec.420 of the IPC is justified. I say so because the allegation is only that the petitioners - transferees, under the original assignees, have, contrary to the stipulations in the assignment document, constructed resorts in the land assigned. How does this amount to an offence under Sec.420 of the IPC? The learned D.G.P. prays for time to peruse the Case Diary and make his submissions. Time granted. Call on 25/6/2007.

2. There shall be an interim direction that if the petitioners were arrested on or before 25/6/07, they shall be released on their executing bonds for Rs.25,000/- each without any sureties.

(R. BASANT, JUDGE)

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